

# **U.S. DEPARTMENT OF TRANSPORTATION FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION FIELD OPERATIONS TRAINING MANUAL**

## **Volume - II: Compliance**

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#### **1. DEFINITIONS**

- a. Complaint: A written allegation of a violation of regulation or law, from any person, individual, organization, or government entity.
- b. Congressional Request: A jurisdictional complaint or a written request to perform a compliance review (CR) on a particular motor carrier which originated from a member of Congress. A jurisdictional complaint which originated from an individual or organization, and was forwarded by a Congressional member to the Federal Motor Carrier Safety Administration (FMCSA). The handling of a Congressional request depends upon its origin. See Paragraph 2 (General Guidance) of this chapter for handling guidance.
- c. Jurisdictional Complaint: A written allegation of a violation of a regulation or law administered by the FMCSA.
- d. Non-jurisdictional Complaint: A written allegation of a violation of a regulation or law administered by another Federal, State, or local government agency.

- e. Nonfrivolous Complaint: A written allegation of a violation of regulation or law which contains sufficient detailed descriptive information of events (e.g. names of involved individuals, specific circumstances, etc.) to create a reasonable suspicion that such violation occurred or is occurring. The allegation(s) of a nonfrivolous complaint should be considered reliable, pending further investigation.
- f. Substantial Violation: Any violation of an acute or critical regulation as listed in 49 CFR Part 385, appendix B.
- g. Timely Complaint: A written allegation of a violation of a regulation or law which is occurring or has occurred within 60 calendar days prior to the date when the complaint was received by the FMCSA. In the case of a complaint that was forwarded by a member of Congress, the date of receipt by the Congressional member is used to determine timeliness.

## **2. NEW POLICY AND GENERAL GUIDANCE**

- a. The industry and the public have expressed concern about FMCSA's policy not to accept anonymous complaints from drivers and others because of the fear the complainant may have of reprisal. The Agency will now investigate anonymous complaints that are timely, nonfrivolous, jurisdictional and that allege a substantial violation.
- b. At a minimum, complaints of substantial violations of the FMCSR and HMR must contain the other requirements of Part 386.12 as listed below:
  - (1) Allege a substantial violation of the Federal Motor Carrier Safety Regulations;
  - (2) The violation must have occurred within the previous 60 days;
  - (3) The name and address of the alleged violator;
  - (4) The specific provisions of the regulations that the complainant believed were violated; and
  - (5) A concise statement of the facts to substantiate each allegation, including the date of each alleged violation.
- c. Although it is now policy to investigate anonymous complaints, it is recommended that all attempts are made to obtain the identity of the

complainant because having such information may be important for the investigation. Under such circumstances, remind the complainant of the protections provided under the law and our policy not to disclose their identity.

- d. Complaint tracking procedures: All jurisdictional non-frivolous complaints (including those complaints handled without the performance of a CR) and all Congressional requests must be recorded, tracked, and prioritized by using the Complaints/Enforcement Follow Ups function of SAFETYNET (a part of the Micro Census Module.) The manner of handling of each jurisdictional non-frivolous complaint and Congressional request (e.g. CR, letter, etc.) must be recorded. Commercial/economic complaints must be recorded in the Economic Complaint Register. All written frivolous complaints should be filed for future reference.
- e. Multiple complaints of this type filed against the same entity should be handled by a single action when feasible. The State Director or his/her designee must eventually inform a person who submits this type of complaint, by letter or telephone call, about how the agency handled the complaint.
- f. Complaints of nonsubstantial violations: Complaints alleging nonsubstantial violations are generally not investigated. In any event, a copy of the complaint must be placed in the motor carrier's file for future reference. In the unusual event that a complaint of this type is investigated, the investigation must be initiated within 180 calendar days after receipt of the complaint. The State Director or his/her designee must eventually inform a person who submits this type of complaint, by letter or telephone call, about how the agency handled the complaint.
- g. Oral allegations: Oral allegations of violations will generally not be investigated. Complainants who make allegations of violations by telephone should be encouraged to submit a written complaint. These individuals should be provided with the appropriate address of the FMCSA in the State where the motor carrier is domiciled and the specific information necessary to process the statement as a timely, nonfrivolous complaint of substantial violation. These individuals should be advised that they will not be granted immunity from prosecution if they are party to a violation.
- h. Anonymous complaints: Anonymous complaints which are timely, nonfrivolous, and jurisdictional alleging a substantial violation will be investigated.

- i. Telephone hotline complaints: Any person can report a safety violation by calling 1-888-DOT-SAFT (1-888-368-7238). Reports originating from the hotline are forwarded to the appropriate State Director for handling. These reports are handled in the same manner as a written complaint in accordance with the guidance, policies, and procedures in this chapter.
- j. Whistleblower/discrimination complaints: A motor carrier is prohibited from discriminating against a driver (e.g. termination of employment, demotion, undesirable reassignment, removal of seniority, elimination of personal use leave, etc.) who has refused to operate an unsafe commercial motor vehicle, violate a safety law or regulation, or drive under conditions that may cause serious bodily injury. It is also illegal for a motor carrier to discriminate against a driver who files a complaint with the FMCSA or testifies in a proceeding before the agency. A driver who alleges to have been the victim of such discrimination should be advised to file a complaint with a regional office of the U.S. Department of Labor's Occupational Safety and Health Administration (OSHA).
- k. Compliance Review Requests and Jurisdictional Complaints Originating From Congressional Members.
  - (1) A CR must be conducted in response to a CR request originating from a member of Congress. The CR must be initiated as soon as practicable, but no later than 90 calendar days after the date when the request was received by the FMCSA.
  - (2) A CR must be conducted in response to a jurisdictional complaint originating from a member of Congress. The CR must be initiated as soon as practicable, but no later than 90 calendar days after the date when the request was received by the FMCSA. A streamlined CR may be conducted in accordance with Paragraph 4 of this chapter.
  - (3) For a CR request or jurisdictional complaint (originating from a member of Congress) which was forwarded from FMCSA headquarters to a division or other field office for handling, the field office must submit a draft written response (addressed to the Congressional member) within 14 calendar days after completion of the CR, to the Office of Enforcement and Compliance. The appropriate letter language (Illustration 8-1, Figure 6) should be used in the draft response. The Office of Policy, Plans, and Regulations will, in coordination with the Office of Enforcement and Compliance, send the final written response to the Congressional member.
  - (4) If a resource center, division, or other field office receives a CR request or jurisdictional complaint directly from a member of Congress, the field office must submit a draft written response

(addressed to the Congressional member) within 14 calendar days after completion of the CR, to Office of Enforcement and Compliance. The appropriate letter language (Illustration 8-1, Figure 6) should be used in the draft response. Office of Policy, Plans, and Regulations will, in coordination with the Office of Enforcement and Compliance, send the final written response to the Congressional member.

I. Complaints Forwarded by Congressional Members.

- (1) Complaints that are sent to a member of Congress and forwarded by the member to the FMCSA, must generally meet the criteria in Paragraph 2 (b) of this chapter to be investigated. If these criteria are met, a complaint of this type is handled by executing the procedures in Paragraph 3 of this chapter. A complaint of this type which alleges nonsubstantial violations may be investigated if there is a strong supporting reason and available resources. If a complaint of this type is handled by conducting a CR, the CR must be initiated within 90 calendar days after the date when the complaint was received by the FMCSA.
- (2) If a complaint of this type is forwarded from FMCSA headquarters to a division or other field office for handling, the field office must submit a draft written response (addressed to the Congressional member) within 14 calendar days after completion of the CR, to Office of Enforcement and Compliance. The appropriate letter language (Illustration 8-1, Figure 7) should be used in the draft response. Office of Policy, Plans, and Regulations will, in coordination with the Office of Enforcement and Compliance, send the final written response to the Congressional member.
- (3) If a service center, division, or other field office receives a complaint of this type directly from a member of Congress, a field office must submit a draft written response (addressed to the Congressional member) within 14 calendar days after completion of the CR, to Office of Enforcement and Compliance. The appropriate letter language (Illustration 8-1, Figure 7) should be used in the draft response. Office of Policy, Plans, and Regulations will, in coordination with the Office of Enforcement and Compliance, send the final written response to the Congressional member.
- (4) The State Director must respond to the complainant (party who submitted the complaint to the Congressional member) by executing the appropriate procedures in Paragraph 6 of this chapter.

- m. Complaints Forwarded by the Office of Inspector General: Complaints that are sent to the Office of Inspector General (OIG), and are forwarded by the OIG to the FMCSA, must generally meet the criteria in Paragraph 2 (b) of this chapter to be investigated. If these criteria are met, a complaint of this type is handled by executing the procedures in Paragraph 3 of this chapter. A complaint of this type which alleges nonsubstantial violations may be investigated if there is a strong supporting reason and available resources. If a complaint of this type is handled by conducting a CR, the CR must be initiated within 90 calendar days after the date when the complaint was received by the FMCSA.
- n. Equipment complaints: In handling complaints alleging the operation of unsafe equipment, assistance may be requested from the Motor Carrier Safety Assistance Program (MCSAP) State agency in the State where the vehicles are domiciled. This type of complaint may be investigated solely by the FMCSA or the MCSAP State agency, or jointly by the FMCSA and the MCSAP State agency.
- o. Motorist complaints.
  - (1) Most motorist complaints are allegations of unsafe driving. A CR is generally not performed in response to a motorist complaint because this type of complaint usually addresses an isolated instance.
  - (2) The administrative handling of a motorist complaint is left to the discretion of the State Director. At a minimum, a copy of the motorist complaint must be placed in the motor carrier's file for future reference. A motorist complaint may be handled by providing the complainant with the address and telephone number of the motor carrier (the entity alleged to be in violation) and by recommending the complainant contact the carrier to try to resolve the matter. A motorist complaint may also be handled by informing the motor carrier by letter or telephone call of the general allegations of the motorist complaint and requesting the carrier to address the matter, or referring the motorist complaint to the appropriate local law enforcement agency.

### **3. *HANDLING PROCEDURES AND DEADLINES FOR SAFETY AND HAZARDOUS MATERIALS COMPLAINTS***

- a. In order to make a better informed decision as to whether a complaint is nonfrivolous, all reasonable attempts should be made to discuss the complaint with the complainant prior to the initiation of any CR. This discussion may be conducted by telephone. If a CR is conducted, a discussion with the complainant will often provide information which will facilitate an efficient investigation.

- b. Timely, nonfrivolous, and jurisdictional complaints alleging a substantial violation must be handled by conducting a CR as soon as practicable, but no later than 90 calendar days after receipt of the complaint. A streamlined CR may be conducted in accordance with Paragraph 4 of this chapter.
- c. Complaint handling in the case of a recent CR: Complaints as described in Paragraph 3 (b) must be handled promptly regardless of the recentness of a previous CR. If a safety complaint (which meets the criteria in Paragraph 2 (b) of this chapter) is received about a motor carrier that had a CR in the previous 12 months, handle the complaint according to the following guidance based on the particular situation:
  - (1) If the alleged type(s) of violation(s) in the complaint was discovered during the recent CR and enforcement action was not taken, the State Director has the discretion to either assign an investigator to conduct another CR or make a note in the agency's file on the motor carrier for future reference. In any case, the State Director must inform the complainant by telephone or in writing how the complaint was handled.
  - (2) If the alleged type(s) of violation(s) in the complaint was discovered during the recent CR and enforcement action was taken, handle the complaint during an enforcement follow-up CR.
  - (3) If the alleged type(s) of violation(s) in the complaint was not discovered during the recent CR, but enforcement action was taken for other violations, handle the complaint during an enforcement follow-up CR.
  - (4) If the alleged type(s) of violation(s) in the complaint was not discovered during the recent CR, and enforcement action was not taken for other violations, conduct a CR as soon as practicable, but no later than 90 calendar days after receipt of the complaint. A streamlined CR may be conducted in accordance with section 5 of this chapter.

#### **4. *OPTIONAL STREAMLINED COMPLIANCE REVIEW PROCEDURES FOR MOTOR CARRIERS***

If the motor carrier has had a CR in the previous 24 months, the investigator has the option of conducting a streamlined CR in lieu of a complete CR. In accordance with Chapter 6, follow the streamlined review procedures. In addition review of all parts of the regulations wherein the complainant alleged that a violation occurred.

## **5. CONFIDENTIALITY OF COMPLAINANT(S) AND INVESTIGATION GUIDELINES:**

- a. Section 212(b) of the Motor Carrier Safety Act of 1984, now codified at 49 U.S.C. § 31143(b) reads: “Notwithstanding section 552 of title 5, the Secretary may disclose the identity of a complainant only if disclosure is necessary to prosecute the violation. If disclosure becomes necessary, the Secretary shall take every practical means within the Secretary’s authority to ensure that the complainant is not subject to harassment, intimidation, disciplinary action, discrimination, or financial loss because of the disclosure.”
- b. The identity and occupation of the complainant and any communication between the complainant and the FMCSA or State agency must be treated with strict confidentiality. **Under no circumstances shall the name or occupation of the complainant be revealed by a safety specialist or FMCSA employee, unless authorized to do so.** The Secretary of Transportation, or his designee, can release this information only under specific circumstances as outlined within 49 U.S.C. § 31143(b). Such release of information must be coordinated through the appropriate Assistant Chief Counsel or the Office of the Chief Counsel. State officials who perform complaint investigations must also follow these policies. Should written correspondence be sent to a motor carrier, the State Director must ensure that the provided information does not enable a motor carrier to determine the identity of the complainant. When the motor carrier has a small number of employees, extreme care must be taken to protect the confidentiality of a complaining employee or former employee.
- c. During discussions with motor carrier officials, personnel performing complaint investigations may explain that one reason for the initiation of the CR was the receipt of a nonfrivolous complaint. This reason must be withheld when its disclosure would enable the motor carrier to identify the complainant.
- d. When requesting documents during a complaint investigation, the investigator should conceal the identity of the complainant and the targeted area(s) of the investigation by requesting a broad sample of documents related to multiple drivers and vehicles, which would enable an investigation of the alleged examples and types of violations.

## **6. RESPONDING TO THE COMPLAINANT:**

- a. If a complaint investigation is not initiated, respond to the complainant using a letter similar to Illustration 8-1, Figure 2. File the complaint and the response letter in the motor carrier’s file.



- b. If a complaint investigation is initiated, respond initially to the complainant using a letter similar to Illustration 8-1, Figure 1. Upon completion of the investigation, advise the complainant of the results of the investigation by using a letter similar to Illustration 8-1, Figures 3, 4, or 5. File the complaint and all letters to the complainant in the motor carrier's file.
- c. In consideration of the complaint becoming a permanent document in the motor carrier's file, care must be taken to protect the confidentiality of the complainant even after the passing of one year or longer since the filing of the complaint.
- d. If the complainant challenges the results of an investigation, the State Director should consider assigning a different investigator to re-investigate the complaint.

## **7. *ENFORCEMENT REPORT PREPARATION GUIDANCE***

If an enforcement report is prepared, the following explanation must be used in the CR Report Continuation Sheet as the reason for contact: "This investigation was initiated as the result of a letter alleging violations of (appropriate 49 CFR section)." The identity and occupation of the complainant must not be mentioned.